

37 Am. Jur. 2d Fraud and Deceit § 1

American Jurisprudence, Second Edition | May 2021 Update

Fraud and Deceit

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West's Key Number Digest

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[Validity, Construction, and Application of State Computer Crime and Fraud Laws, 87 A.L.R.6th 1](#)

Trial Strategy

[Proof of Liability for Violation of Privacy of Internet User, by Cookies or Other Means, 67 Am. Jur. Proof of Facts 3d 249](#)

[Proof of Copyright Infringement By File Sharing, 63 Am. Jur. Proof of Facts 3d 1](#)

[Proof of Personal Jurisdiction in the Internet Age, 59 Am. Jur. Proof of Facts 3d 1](#)

[Computer Malpractice, 32 Am. Jur. Proof of Facts 3d 1](#)

Forms

[Am. Jur. Legal Forms 2d § 108:61](#)

[Am. Jur. Legal Forms 2d § 150B:31](#)

Am. Jur. Legal Forms 2d § 150B:27

Law Reviews and Other Periodicals

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- Borick, [A Look at Vermont's Computer Crime Statute](#), 34 Vt. B.J. 38 (2008)
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- Jepson, Lessons from the Power Ventures Case Include "Terms of Use Can Create Computer Fraud and Abuse Act Liability," 14 No. 4 E-Commerce L. Rep. 12 (2012)
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- Nowicki, [No Free Lunch \(or Wi-Fi\): Michigan's Unconstitutional Computer Crime Statute](#), 2009 UCLA J.L. & Tech. 1 (2009)
- Tracy, [Technology Law—Great Google-y Moogley: The Effect and Enforcement of Click Fraud and Online Advertising](#), 32 U. Ark. Little Rock L. Rev. 347 (2010)

Fraud and misrepresentation cannot be defined easily because they can be accomplished in so many different ways; however, they present issues of fact.¹ In addition to circumstantial evidence, motive, past conduct, and related wrongful acts are factors to be considered by the trial court in examining whether a claim for fraud exists.²

The term "fraud" is a generic one³ which embraces all the multifarious means resorted to by one individual to gain advantage over another by false suggestions or by suppression of the truth.⁴ "Fraud," a peculiar species of falsity, is the intentional misrepresentation of a material fact made for the purpose of inducing another to rely, and on which the other reasonably relies to his or her detriment.⁵ "Fraud" consists in deception practiced in order to induce another to part with property or surrender some legal right and which accomplishes the end designed.⁶ The tort of fraud is defined as the willful misrepresentation of a material fact, made to induce another to act, upon which such person acts to his or her injury; an essential element in every fraud action is a finding that the representation was made with the intention and purpose of deceiving the opposite party and for the purpose of injuring him or her.⁷ "Fraud" involves a misrepresentation or suppression of the truth made with the intention either to obtain an unjust advantage for one party or to cause a loss or inconvenience to the other.⁸ It is defined generally under the common law as an intentional perversion of truth to induce another or to act in reliance upon it.⁹ "Fraud" consists in anything calculated to deceive, whether by a single act or combination, or by suppression of truth, or a suggestion of what is false, whether it be a direct falsehood or by innuendo, by speech or silence, word or mouth, of look or gesture.¹⁰ It is practiced when the deception of another to his or her damage is brought about by a misrepresentation of fact or by silence when good faith required expression.¹¹ "Fraud" is the intentional misrepresentation of a material fact made for the purpose of inducing another to rely and on which the other reasonably relies to his or her detriment.¹² The gist of fraud is successfully using cunning, deception, or artifice to cheat another to the other's injury.¹³ Every fraud in its most general and fundamental conception consists of the obtaining of an undue advantage by means of some act or omission that is unconscientious or a violation of good faith.¹⁴

"Fraud" has also been defined by the courts to mean—

- deceitful practices in depriving or endeavoring to deprive another of his or her known right by means of some artful device or plan contrary to the plain rules of common honesty.¹⁵
- an instance or act of trickery or deceit, an act of deluding, or an intentional misrepresentation for the purpose of inducing

- another in reliance upon it to part with some valuable thing.¹⁶
- an intentional perversion or concealment of the truth for the purpose of inducing another in reliance upon it to part with some valuable thing or to surrender a legal right.¹⁷
 - any cunning, deception, or artifice used, in violation of a legal or equitable duty, to circumvent, cheat, or deceive another.¹⁸
 - any artifice by which a person is deceived to his or her disadvantage.¹⁹
 - an act, omission, or concealment in breach of a legal duty, trust, or confidence justly imposed, when the breach causes injury to another or the taking of an undue and unconscientious advantage.²⁰
 - anything falsely said or done to the injury of the property rights of another.²¹
 - all surprise, trick, cunning, dissembling, and any unfair way by which another is cheated.²²
 - any act designed to gain an unfair advantage over another.²³
 - a deceit, trick, or an artifice by which the right or interest of another is injured.²⁴
 - anything that is calculated to deceive, whether it is a single act or a combination of circumstances, or acts or words that amount to a suppression of the truth, or mere silence.²⁵
- Fraud, therefore, in its general sense, is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealments involving a breach of legal or equitable duty, trust, or confidence justly reposed, resulting in damage to another,²⁶ or by which an undue and unconscientious advantage is taken of another.²⁷ The hallmarks of fraud are misrepresentation or deceit.²⁸ “Fraud” is a term of art naming a common-law cause of action.²⁹

Observation:

Equitable fraud is separate from, and broader, than common-law fraud.³⁰ The flexibility of the doctrine of equitable fraud is necessary to allow courts of equity to address fraud in all of its forms, unhampered by the formalism that traditionally limited the common-law courts.³¹

CUMULATIVE SUPPLEMENT

Cases:

In the context of common-law fraud, “actual” fraud stands in contrast to “implied fraud” or “fraud in law,” which describe acts of deception that may exist without the imputation of bad faith or immorality. [Husky Intern. Electronics, Inc. v. Ritz](#), 136 S. Ct. 1581 (2016).

Common-law “fraud” connotes deception or trickery generally. [Husky Intern. Electronics, Inc. v. Ritz](#), 136 S. Ct. 1581 (2016).

The elements of an action in fraud under Ohio law are: (1) a false representation concerning a fact; (2) knowledge of the falsity of the representation or utter disregard for its truthfulness; (3) intent to induce reliance upon the representation; (4) justifiable reliance upon the representation; and (5) injury proximately caused by the reliance. [D & H Autobath v. PJCS Properties I, Inc.](#), 2012-Ohio-5845, 983 N.E.2d 891 (Ohio Ct. App. 12th Dist. Fayette County 2012).

[END OF SUPPLEMENT]

Footnotes

- ¹ Cohen v. Roll-A-Cover, LLC, 131 Conn. App. 443, 27 A.3d 1 (2011), certification denied, 303 Conn. 915, 33 A.3d 739 (2011); Centimark Corp. v. Village Manor Associates Ltd. Partnership, 113 Conn. App. 509, 967 A.2d 550 (2009).
- ² Feagins v. Tyler Lincoln-Mercury, Inc., 277 S.W.3d 450 (Tex. App. Texarkana 2009).
- ³ McClellan v. Cantrell, 217 F.3d 890, 42 U.C.C. Rep. Serv. 2d 284 (7th Cir. 2000); Savoy v. U.S., 981 A.2d 1208, 58 A.L.R.6th 775 (D.C. 2009); Murray v. D & J Motor Co., Inc., 1998 OK CIV APP 69, 958 P.2d 823, 35 U.C.C. Rep. Serv. 2d 1177 (Div. 4 1998).
- ⁴ Savoy v. U.S., 981 A.2d 1208, 58 A.L.R.6th 775 (D.C. 2009).
- ⁵ Sacred Heart Health Systems, Inc. v. Humana Military Healthcare Services, Inc., 601 F.3d 1159 (11th Cir. 2010).
- ⁶ Reid v. Landsberger, 123 Conn. App. 260, 1 A.3d 1149 (2010), appeal denied, 298 Conn. 933, 10 A.3d 517 (2010) and appeal denied, 298 Conn. 933, 10 A.3d 517 (2010).
- ⁷ Weaver v. Pizza Hut of America, Inc., 298 Ga. App. 645, 680 S.E.2d 668 (2009).
- ⁸ Radcliffe 10, L.L.C. v. Zip Tube Systems of Louisiana, Inc., 998 So. 2d 107 (La. Ct. App. 1st Cir. 2008), amended on other grounds on reh'g, 22 So. 3d 178 (La. Ct. App. 1st Cir. 2008) and writ denied, 5 So. 3d 119 (La. 2009) and writ denied, 5 So. 3d 120 (La. 2009); B-G & G Investors VI, L.L.C. v. Thibaut HG Corp., 985 So. 2d 837 (La. Ct. App. 4th Cir. 2008).
- ⁹ Kerwin v. Missouri Dental Bd., 375 S.W.3d 219 (Mo. Ct. App. W.D. 2012), reh'g and/or transfer denied, (July 31, 2012).
- ¹⁰ Kostrycky v. Pentron Laboratory Technologies, LLC, 2012 PA Super 152, 52 A.3d 333 (2012).
- ¹¹ R.W.E. v. A.B.K., 2008 PA Super 253, 961 A.2d 161 (2008).
- ¹² Sacred Heart Health Systems, Inc. v. Humana Military Healthcare Services, Inc., 601 F.3d 1159 (11th Cir. 2010).
- ¹³ Western Reserve Life Assur. Co. of Ohio v. Graben, 233 S.W.3d 360 (Tex. App. Fort Worth 2007).
- ¹⁴ Port Liberte Homeowners Ass'n, Inc. v. Sordoni Const. Co., 393 N.J. Super. 492, 924 A.2d 592 (App. Div. 2007).
- ¹⁵ Hall v. Geiger-Jones Co., 242 U.S. 539, 37 S. Ct. 217, 61 L. Ed. 480 (1917).
- ¹⁶ State v. Galioto, 126 Ariz. 188, 613 P.2d 852 (Ct. App. Div. 2 1980).
- ¹⁷ Desert Equities, Inc. v. Morgan Stanley Leveraged Equity Fund, II, L.P., 624 A.2d 1199 (Del. 1993); Davis v. Rubin, 9 Haw. App. 198, 828 P.2d 1284 (1991); Hernandez v. State Bd. of Registration for Healing Arts, 936 S.W.2d 894 (Mo. Ct. App. W.D. 1997); In re Adoption of Zschach, 75 Ohio St. 3d 648, 665 N.E.2d 1070 (1996).
- ¹⁸ Moore v. State Bank of Burden, 240 Kan. 382, 729 P.2d 1205 (1986).
- ¹⁹ Kostrycky v. Pentron Laboratory Technologies, LLC, 2012 PA Super 152, 52 A.3d 333 (2012).
- ²⁰ Vela v. Marywood, 17 S.W.3d 750 (Tex. App. Austin 2000), review denied with per curiam opinion, 53 S.W.3d 684 (Tex. 2001).
- ²¹ Gerver v. Benavides, 207 W. Va. 228, 530 S.E.2d 701 (1999).
- ²² McClellan v. Cantrell, 217 F.3d 890, 42 U.C.C. Rep. Serv. 2d 284 (7th Cir. 2000); Murray v. D & J Motor Co., Inc., 1998 OK CIV APP 69, 958 P.2d 823, 35 U.C.C. Rep. Serv. 2d 1177 (Div. 4 1998).

- 23 Ragland v. Shattuck Nat. Bank, 36 F.3d 983 (10th Cir. 1994).
- 24 Puller Mortg. Associates, Inc. v. Keegan, 829 F. Supp. 1507 (S.D. Ind. 1993).
- 25 Prime Bldg. Corp. v. Itron, Inc., 22 F. Supp. 2d 440 (E.D. Pa. 1998) (applying Pennsylvania law).
As to single or multiple acts or schemes as fraud, see § 40.
- 26 Citizens Sav. and Loan Ass'n v. Fischer, 67 Ill. App. 2d 315, 214 N.E.2d 612 (5th Dist. 1966); Umbehr v. Board of
County Com'rs of Wabaunsee County, 252 Kan. 30, 843 P.2d 176 (1992); New York Life Ins. Co. v. Nashville Trust
Co., 200 Tenn. 513, 292 S.W.2d 749, 59 A.L.R.2d 1086 (1956).
As to the means of perpetrating fraud by acts, omissions, and concealments, see §§ 40 to 47.
- 27 Barker v. Barker, 75 N.D. 253, 27 N.W.2d 576, 171 A.L.R. 447 (1947); New York Life Ins. Co. v. Nashville Trust
Co., 200 Tenn. 513, 292 S.W.2d 749, 59 A.L.R.2d 1086 (1956).
- 28 Ed Peters Jewelry Co., Inc. v. C & J Jewelry Co., Inc., 215 F.3d 182, 46 Fed. R. Serv. 3d 1130 (1st Cir. 2000).
- 29 State v. Marsh & McLennan Companies, Inc., 241 Or. App. 107, 250 P.3d 371 (2011), review allowed, 350 Or. 532,
258 P.3d 526 (2011).
- 30 Airborne Health, Inc. v. Squid Soap, LP, 984 A.2d 126 (Del. Ch. 2009).
- 31 Airborne Health, Inc. v. Squid Soap, LP, 984 A.2d 126 (Del. Ch. 2009).

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